

## SCOTTISH STATUTORY INSTRUMENTS

# 2005 No. 505

## The Food Hygiene (Scotland) Regulations 2005

PROSPECTIVE

### PART 2

#### MAIN PROVISIONS

##### Hygiene improvement notices

6.—(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, that officer may by a notice served on the food business operator (in these Regulations referred to as a “hygiene improvement notice”)—

- (a) state the officer’s grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;
- (b) specify the matters which constitute the food business operator’s failure to comply;
- (c) specify the measures which, in the officer’s opinion, the food business operator must take in order to secure compliance; and
- (d) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) Any person who fails to comply with a hygiene improvement notice is guilty of an offence.

##### Commencement Information

**II** Reg. 6 in force at 1.1.2006, see [reg. 1\(a\)](#)

##### Hygiene prohibition orders

7.—(1) If—

- (a) a food business operator is convicted of an offence under these Regulations; and
- (b) the court by or before which the food business operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely—

- (a) the use for the purposes of the business of any process or treatment;

*Status: This version of this part contains provisions that are prospective.*

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- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
  - (c) the state or condition of any premises or equipment used for the purposes of the business.
- (3) The appropriate prohibition is–
- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
  - (b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and
  - (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.
- (4) If–
- (a) a food business operator is convicted of an offence under these Regulations; and
  - (b) the court by or before which the food business operator is so convicted thinks it proper to do so in all the circumstances of the case,
- the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.
- (5) As soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a “hygiene prohibition order”), the enforcement authority shall–
- (a) serve a copy of the order on the relevant food business operator; and
  - (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,
- and any person who knowingly contravenes a hygiene prohibition order is guilty of an offence.
- (6) A hygiene prohibition order shall cease to have effect–
- (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and
  - (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.
- (7) The enforcement authority shall issue a certificate under paragraph (6)(a) within 3 days of it being satisfied as mentioned in that paragraph; and on an application by the food business operator for such a certificate, the authority shall–
- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied; and
  - (b) if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination.
- (8) The court shall give a direction under paragraph (6)(b) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made–
- (a) within 6 months of the making of the hygiene prohibition order; or

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(b) within 3 months of the making by the food business operator of a previous application for such a direction.

(9) Where the sheriff makes an order under regulation 8(2) with respect to any food business, paragraph (1) of this regulation shall apply as if the food business operator had been convicted by the sheriff of an offence under these Regulations.

(10) Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 10, paragraph (4) of this regulation shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator shall be construed accordingly.

#### Commencement Information

I2 Reg. 7 in force at 1.1.2006, see [reg. 1\(a\)](#)

### Hygiene emergency prohibition notices and orders

8.—(1) If an authorised officer of an enforcement authority is satisfied that the health risk condition is fulfilled with respect to any food business, the officer may, by a notice served on the relevant food business operator (in these Regulations referred to as a “hygiene emergency prohibition notice”), impose the appropriate prohibition.

(2) If the sheriff is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the sheriff shall, by an order (in these Regulations referred to as a “hygiene emergency prohibition order”), impose the appropriate prohibition.

(3) Such an officer shall not apply for a hygiene emergency prohibition order unless, at least 1 day before the date of the application, the officer has served notice on the relevant food business operator of the officer’s intention to apply for the order.

(4) Paragraphs (2) and (3) of regulation 7 shall apply for the purposes of this regulation as they apply for the purposes of that regulation, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of injury.

(5) As soon as practicable after the service of a hygiene emergency prohibition notice, an authorised officer of an enforcement authority shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the food business as the officer considers appropriate; and any person who knowingly contravenes a hygiene emergency prohibition notice is guilty of an offence.

(6) As soon as practicable after the making of a hygiene emergency prohibition order, an authorised officer of an enforcement authority shall—

- (a) serve a copy of the order on the relevant food business operator; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as the officer considers appropriate,

and any person who knowingly contravenes a hygiene emergency prohibition order is guilty of an offence.

(7) A hygiene emergency prohibition notice shall cease to have effect—

- (a) if no application for a hygiene emergency prohibition order is made within the period of 5 days beginning with the service of the notice, at the end of that period; or
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) A hygiene emergency prohibition notice or a hygiene emergency prohibition order shall cease to have effect on the issue by the enforcement authority of a certificate to the effect that it is

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satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business.

(9) The enforcement authority shall issue a certificate under paragraph (8) within 3 days of it being satisfied as mentioned in that paragraph; and on an application by the food business operator for such a certificate, the authority shall—

- (a) determine as soon as is reasonably practicable and in any event within 14 days whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination.

(10) Where a hygiene emergency prohibition notice is served on a food business operator, the enforcement authority shall compensate the food business operator in respect of any loss suffered by reason of compliance by the food business operator with the notice unless—

- (a) an application for a hygiene emergency prohibition order is made within the period of 5 days beginning with the service of the notice; and
- (b) the sheriff is satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the food business at the time when the notice was served,

and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

#### Commencement Information

**I3** Reg. 8 in force at 1.1.2006, see [reg. 1\(a\)](#)

#### Remedial action notices and detention notices

**9.—(1)** Where it appears to an authorised officer of an enforcement authority that in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004—

- (a) any of the requirements of the Hygiene Regulations is being breached; or
- (b) inspection under the Hygiene Regulations is being hampered,

the authorised officer may, by a notice served on the relevant food business operator or the operator’s duly authorised representative (in these Regulations referred to as a “remedial action notice”)—

- (c) prohibit the use of any equipment or any part of the establishment specified in the notice;
- (d) impose conditions upon or prohibit the carrying out of any process; or
- (e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice shall be served as soon as practicable and shall state why it is being served.

(3) If a remedial action notice is served under paragraph (1)(a), it shall specify the breach and the action needed to remedy it.

(4) An authorised officer of the enforcement authority whose authorised officer served the remedial action notice shall, as soon as the officer is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or the operator’s duly authorised representative.

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(5) An authorised officer of an enforcement authority may, at an establishment subject to approval under Article 4(2) of Regulation 853/2004, by a notice served on the relevant food business operator or the operator’s duly authorised representative (in this regulation referred to as a “detention notice”) require the detention of any animal or food for the purposes of examination (including the taking of samples).

(6) An authorised officer of the enforcement authority whose officer served the original detention notice shall, as soon as satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or the operator’s duly authorised representative.

(7) Any person who fails to comply with a remedial action notice or a detention notice is guilty of an offence.

**Commencement Information**

**I4** Reg. 9 in force at 1.1.2006, see [reg. 1\(a\)](#)

**Offences due to fault of another person**

**10.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

**Commencement Information**

**I5** Reg. 10 in force at 1.1.2006, see [reg. 1\(a\)](#)

**Defence of due diligence**

**11.—(1)** In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused’s control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless at the earlier of—

- (a) a date 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of that person, before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.

**Commencement Information**

**I6** Reg. 11 in force at 1.1.2006, see [reg. 1\(a\)](#)

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**Changes and effects yet to be applied to :**

- Regulations applied by [S.S.I. 2005/616 reg. 13\(7\)](#)
- Regulations revoked by [S.S.I. 2006/3 Sch. 8](#)